IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.311 OF 2004

Shamin Desai ....Petitioner

V/s.

Neel B. Dalal & Anr. ....Respondents

Mr.Robin Jaisinghani i/b Basant Tilokani & Co. for the Petitioner.

Mr.R.M. Jaykar i/b M/s. Khaitan Jaykar for Respondent No.1.

CORAM : S.J. VAZIFDAR, J.
DATED : 11TH OCTOBER, 2004.

P.C. :

1. This is a Petition for setting aside an order dated 10th May, 2004 passed by the Appellate Bench, Arbitration Department of the Bombay Stock Exchange in the sum of Rs.11,55,986/-.

2. The lower Bench of the Arbitral Tribunal had passed an award in the similar sum. Being aggrieved thereby, the Petitioner had filed the appeal before the Appellate Bench. It is not necessary to refer to all the proceedings that have taken place before the

Arbitrators for the purpose of deciding this Petition.

3. Mr.Jaisinghani, the learned counsel appearing on behalf of the Petitioner submitted that the award was passed on no evidence whatsoever. The submission is made on the basis that Respondent No.1 had not produced the contract notes and that the T.R.D. did not refer to any transaction specifically in the name of the Petitioner under his client code No.D-154. The submissions are unfounded.

4. The Arbitrators have specifically recorded that the contract notes and the bills were produced before the Petitioner for inspection. Apart from the fact that this is a finding of fact, it is pertinent to note that by a letter dated 19th March, 2001, Respondent No.1 had specifically stated that the contract notes had been forwarded to the Petitioner. There was no reply to this letter. The finding of the learned Arbitrators cannot therefore be said to be unfounded. The defence on this basis that the T.R.D. records did not refer specifically to any transaction in the Petitioner’s name is also without substance.

5. In respect of this allegation, the Arbitral Tribunal issued directions on 24th February, 2004

calling upon Respondent No.1 to file an affidavit explaining the same. Respondent No.1 did so by its affidavit dated 27th February, 2004. The explanation given by Respondent No.1 was considered and accepted by the learned Arbitrators. The learned Arbitrators accepted the contention that it was a regular practice that when various scrips are bought in bulk on a particular day they would be recorded in the BOLT/sauda sheets which showed the list of trades which are executed on a particular day by the broker and hence the said sheet has the broker ID on the left hand top corner. At the end of the day it was recorded in each claimants account with the settlement number and the details of the scrips. This was to ensure fairness to various clients on whose behalf the scrips are purchased on the same day. In other words this would ensure that, no single client is foisted with a higher price. The mandatory requirements to the contrary came into effect only on 1st August, 2001.

6. In any event this is a finding of fact which again cannot termed as patently absurd or improbable. There is nothing on record to suggest the same. In fact the evidence and the record supports the finding of the Arbitral Tribunal.

7. Mr.Jaisinghani relied upon an unreported judgment of a learned single Judge, F.I. Rebello, J. in the case of - *M/s.Prakash Enterprises v. K.M. Nemani & others, in Arbitration Petition No.149 of 2000, dated 7th February, 2003*. In that case, the T.R.D. sheets disclosed no transaction. On that basis, the learned single Judge held that the best evidence was available to the Tribunal and as that showed no transaction as set out or claimed by the Petitioner, the Arbitral Tribunal rightly rejected the claim. I do not read the judgment as an absolute proposition that irrespective of the circumstances, wherever the T.R.D. sheets do not reflect, the specific details in respect of a client, no claim is sustainable or that the same would indicate that there were dealings/transactions on behalf of the clients. The facts in that case were different from those in the present case. That case did not involve bulk purchases for various clients. The case therefore, in any event is clearly distinguishable.

8. In the circumstances, the Petition is dismissed. At the request of Mr.Jaisinghani, Respondent No.1 is directed not to withdraw the amount of Rs.5,78,571/- deposited by the Petitioner with the

Bombay Stock Exchange for a period of eight weeks from today.

9. The Petition is made returnable in normal course.

. Parties to act on an ordinary copy of this order duly authenticated by the Chamber Registrar/Court Stenographer of this Court.